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8
9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11
12 JOSEPH P. CUVIELLO and DENIZ
BOLBOL, individually,

Case No.: 3:23-CV-01652

13 Plaintiffs,

14 v.

15 ROWELL RANCH RODEO, INC.;
16 HAYWARD AREA RECREATION AND
PARK DISTRICT; HAYWARD AREA
RECREATION AND PARK DISTRICT
PUBLIC SAFETY MANAGER/RANGER
17 KEVIN HART; and DOES 1 through 2, in
their individual and official capacities, jointly
and severally.
18
19 Defendants.

**DEFENDANT ROWELL RANCH RODEO
INC.'S NOTICE AND CROSS-MOTION
FOR SUMMARY JUDGMENT, OR IN THE
ALTERNATIVE, SUMMARY
ADJUDICATION**

20 Date: August 15, 2024
21 Time: 10:00 a.m.
Dept.: 5, 17thFloor
Judge: Hon. Vince Chhabria

Complaint Filed: April 6, 2023
Trial: October 21, 2024

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1 Pursuant to Federal Rule of Civil Procedure 56, Defendant Rowell Ranch Rodeo, Inc.
 2 (“Rowell Ranch”), respectfully moves for summary judgment on all of Plaintiffs JOSEPH P.
 3 CUVIELLO and DENIZ BOLBOL’s claims against it, and for other and further relief as the Court
 4 deems just and proper. In support, Rowell Ranch submits its Memorandum of Law which is
 5 incorporated below, and the Declaration of Osmaan Khan, which is being filed contemporaneously
 6 with this cross-motion.

7 **I. INTRODUCTION**

8 This lawsuit is an attempt by Plaintiffs JOSPEH P. CUVIELLO (“Plaintiff Cuviello”) and
 9 DENIZ BOLBOL (“Plaintiff Bolbol”), two long-term animal rights activists, to benefit from a
 10 series of non-incidents. The concerned events took place on May 20 and May 21, 2022, at a rodeo
 11 event hosted by Defendant ROWELL RANCH RODEO, INC. (“Rowell Ranch”) at the Rowell
 12 Ranch Rodeo Park (“Park”) in Hayward. Plaintiffs showed up to demonstrate and protest at the
 13 event by spreading their message regarding animal cruelty. The complaint filed in this action
 14 claims an elaborate conspiracy spread over known and unknown actors, including not just Rowell
 15 Ranch and its volunteers, but also law enforcement and a special park district. Plaintiffs spin the
 16 facts to benefit themselves while smearing responsibility amongst all of the named defendants.
 17 Essentially, Plaintiffs allege that they had their rights to free speech trampled on and that they were
 18 threatened with arrest, assaulted, and generally inhibited from spreading their message. Plaintiffs
 19 have failed to demonstrate that they have suffered any actual harm or damages. Plaintiffs concede
 20 that did not suffer any physical or emotional injury, or have incurred any economic damages.
 21 Throughout the three-day event, Plaintiffs returned to the Park premises to protest each day without
 22 fail. They were never arrested, detained or physically forced out of the Park or even restricted to a
 23 location.

24 Plaintiffs’ allege the following causes of action against Rowell Ranch and its volunteers:
 25 (i) California Civil Code (“Civ. Code”) §52.1 violation for ROWELL RANCH
 26 volunteer George Ferris’ interaction with Plaintiff Bolbol.
 27 (ii) Civ. Code §52.1 violation for ROWELL RANCH volunteer Gary Houts negligently
 28 driving a utility cart into Plaintiff Cuviello.

- (iii) Civ. Code §51.7 violation for ROWELL RANCH volunteer Gary Houts reporting the Plaintiffs' to the police.
- (iv) Civ. Code §51.7 violation for ROWELL RANCH volunteer George Ferris' interaction with Plaintiff Bolbol.
- (v) Civ. Code §51.7 violation for ROWELL RANCH volunteer Gary Houts negligently driving the utility cart into Plaintiff Cuviello.
- (vi) Assault and Battery against ROWELL RANCH volunteer George Ferris for his interaction with Plaintiff Bolbol.
- (vii) Assault and Battery against ROWELL RANCH volunteer Gary Houts negligently driving the utility cart into Plaintiff Cuviello.

Based on the undisputed material facts outlined below, Plaintiffs' cannot establish the intent of the Rowell Ranch volunteers, nor can they show that they suffered any harm from the actions of the volunteers. Plaintiffs are required to affirmatively prove each element for each of their alleged causes of action. Since the evidence submitted in support of this motion establishes they cannot do so, Rowell Ranch is entitled to an Order dismissing *all* causes of action against it. In the alternative, this Court can adjudicate the dismissal of some, if not all, causes of action against Rowell Ranch.

II. UNDISPUTED MATERIAL FACTS

A. May 20, 2024

Plaintiffs arrived the Park on May 20, 2022 around 6 pm to demonstrate against the use of animals at the rodeo. Declaration of Joseph P. Cuviello in support of Plaintiffs' Motion for Partial Summary Judgment ("Cuviello Decl."), ¶¶ 14, 15, 19. Declaration of Deniz Bolbol in support of Plaintiffs' Motion for Partial Summary Judgement ("Bolbol Decl."), ¶¶ 14, 15. Plaintiffs noticed the cordoned off "Free Speech Area" ("FSA"), and deemed it ineffective for their planned demonstration. Cuviello Decl. ¶ 14. The Plaintiffs continued their demonstration near the Park's pedestrian entrance. Cuviello Decl. ¶ 16. Plaintiffs' demonstration primarily included holding their banners and signs, and passing out leaflets. Cuviello Decl. ¶ 16, Exh. 15, ¶ 13, Exh. 14, Bolbol Decl. ¶ 27, Exh. 16.

1 Gary Houts, ROWELL RANCH volunteer, approached Plaintiffs and informed them of the
 2 FSA. Bolbol Decl. ¶ 15, Exh. 1. Plaintiffs told Gary Houts to call the police if he had a problem.
 3 *Id.* After some antagonistic back-and-forth, Gary Houts called the police and told the dispatcher
 4 that the Plaintiffs were blocking the parking lot and entrance. Cuvillo Decl. ¶ 17, Exh. 7
 5 (timestamp 3:00); Bolbol Decl. ¶ 15, Exh. 1 (timestamp 3:03), Blome Decl. ¶ 9, Exh. 28
 6 (timestamp 1:36-2:56), ¶ 14, Exhs. 33A and 33B.

7 Police officers from Defendant Alameda County Sheriff's Office ("ACSO"), including
 8 Defendant Deputy Mayfield ("Deputy Mayfield") arrived at the Park approximately 5 minutes
 9 after Gary Houts' phone call to dispatch. Cuvillo Decl. ¶ 18. ACSO was scheduled to be at the
 10 Park before Gary Houts made the phone call to dispatch. Blome Decl. ¶ 9, Exh. 28 (timestamp
 11 10:45). The audio recording from ACSO has dispatch personnel talking to a police officer already
 12 present at Park, 7 minutes and 49 seconds after hanging up on Gary Houts. *Id* (timestamp 10:45).
 13 The police officer informs dispatch that they have *already* advised the protestors to keep things
 14 peaceful. *Id.* (timestamp 11:02).

15 Plaintiffs had multiple interactions with Deputy Mayfield and Defendant Kevin Hart
 16 ("Hart") of the Hayward Area Recreation District ("HARD"). Cuvillo Decl., ¶¶ 18 to 27. Around
 17 7:15 pm, Plaintiffs moved to the back entrance of the Park. Plaintiff's demonstration on that day
 18 ended at 7:40 pm. Cuvillo Decl., ¶ 18.

19 Plaintiff Cuvillo, in his Deposition, testified that he was not afraid of arrest on May 20,
 20 2021, after having interacted with Deputy Mayfield and Hart. Declaration of Osmaan Khan in
 21 support of this Cross-Motion, Exhibit 1 – Deposition Transcript of Plaintiff Pat Cuvillo
 22 ("Cuvillo Depo."), at 92: 7-16. Further, Plaintiff Cuvillo testified that *if* law enforcement had
 23 indicated that they were going to arrest him, he would have moved from the location. Cuvillo
 24 Depo., at 86:23-87:6. Plaintiff Cuvillo was not afraid of arrest, and continued to protest not just
 25 on May 20, 2024, but also for the next 2 days. Cuvillo Decl., ¶ 40, Exh. 17.

26 **B. May 21, 2024**

27 Plaintiffs and fellow demonstrators, after demonstrating at the front entrance without
 28 incident, headed toward the back entrance and observed personnel in reflective vests. Bolbol.

1 Decl., ¶ 24, Exh. 5. George Ferris, ROWELL RANCH volunteer in a reflective vest, interacted
 2 with the Plaintiffs as they attempted to proceed towards the back entrance. Bolbol. Decl., ¶ 24,
 3 Exh. 5. (timestamp 0:24). Their interaction, documented on video, went as follows:

4 **Ferris:** Hey you need tickets to the rodeo!
 5 **Bolbol:** Don't touch him!
 6 [Ferris moves a couple of feet to his right side to block the path of Defendant Bolol.]
 7 **Ferris:** You need tickets to the rodeo!
 8 **Bolbol:** Don't touch him!
 9 **Ferris:** Call the cops! Call the cops right now!
 10 [George Ferris blocks the path of Defendant Bolol by standing in front of her.]
 11 **Ferris:** Call the cops right now!
 12 **Bolbol:** You are out of your f***** mind man!
 13 **Ferris:** You are!
 14 **Bolbol:** Don't [inaudible].
 15 **Ferris:** Out!
 16 **Bolbol:** Don't touch me!
 17 **Ferris:** You're touching me! You are running into me! You are touching me!
 18 **Bolbol:** Stop it!
 19 [Ferris has stopped blocking Defendant Bolbol's path, and she continues to walk towards the back
 entrance.
 20 **Ferris:** Out! You need tickets to the rodeo!
 21 **Bolbol:** Stop it! Stop it you bully! That is what you do to the animals too you brute! You brute!
 Trying to intimidate a woman! Shame on him!

22 Bolbol. Decl., ¶ 24, Exh. 5. (timestamp 0:26)

23 George Ferris merely stepped in front of Plaintiff Cuvillo in attempt to block his path.
 24 Bolbol. Decl., ¶ 24, Exh. 5. This was in order to stop him from proceeding further without a ticket
 25 to the rodeo. *Id.* His attention was then diverted to Plaintiff Bolbol, and he attempted to block her
 26 path as well. *Id.* He yelled at her that she needed a ticket for the rodeo, clearly articulating why he
 27 was blocking her path. *Id.* George Ferris also repeatedly shouted, “[o]ut.” *Id.* He did not push into
 28 Plaintiff Bolbol, and only stepped in front of her to block her path. *Id.* It is obvious from the footage
 that if there was any physical contact, it was initiated by Plaintiff Bolbol trying to force her way
 past George Ferris. George Ferris can be heard requesting for assistance by law enforcement. *Id.*
 He also clearly articulates that Plaintiff Bolbol is the one touching him and running into him. *Id.*
 George Ferris stopped blocking Plaintiff Bolbol's path about 30 seconds their interaction had
 commenced, and Plaintiff Bolbol proceeded to the back entrance. Plaintiff Bolbol then threatens a
 woman, also in a green vest, with a lawsuit. *Id.* She continues walking towards the back entrance.
 Id.

1 Later at the back entrance, Plaintiff Cuvillo held a banner with another demonstrator near
 2 a tree, close to where an utility cart that was parked. Cuvillo Decl. ¶ 33, Exh. 13. Gary Houts
 3 approached Plaintiff Cuvillo and told him to not touch the electric utility vehicle with the banner
 4 and Plaintiff Cuvillo moved a step away from the vehicle. Cuvillo Decl. ¶ 33, Exh. 13. Gary
 5 Houts told Plaintiff Cuvillo that he had to move from behind his vehicle and then got into it.

6 Plaintiff Cuvillo can be observed, in his own footage, with his large 2-person banner
 7 standing right behind the utility vehicle. The following exchange takes place:

8 **Houts [off camera likely addressing Plaintiff Cuvillo]:** You can't cover my cart.
 9 **Houts [off camera and addressing someone off camera]:** You asked [inaudible]. There
 10 is a handicap girl in here that needs a ride in a cart.
 11 **Unknown Female [off camera]:** We are taking someone in right now. He is taking
 12 someone in. We will get them to send [inaudible].
 13 **Houts: [off camera]:** [in audible] I will use the center gate.
 14 **Houts [off camera and addressing Plaintiff Cuvillo]:** You all got to move [inaudible].
 15 Houts is seen getting into the utility vehicle.
 16 **Cuvillo:** He can go forward. He is just trying to make trouble.
 17 **Unknown Female [off camera]:** He has to back up.
 18 **Cuvillo:** Why does he have to back up?
 19 **Unknown female [off camera]:** Because he is security!
 20 Cuvillo. Decl., ¶ 34, Exh. 13. (timestamp 0:00)

21 Gary Houts then backs up a short distance and makes imperceptible contact with Plaintiff
 22 Cuvillo. Cuvillo. Decl., ¶ 34, Exh. 13. (timestamp 1:02). Plaintiff Cuvillo does not move and
 23 his reaction does not indicate any fear or intimidation. Cuvillo. Decl., ¶ 34, Exh. 13. (timestamp
 24 1:02). The is as follows:

25 **Cuvillo:** Hey hey hey!
 26 **Unknown Female:** You need to move! He asked you to move!
 27 **Cuvillo:** I got you on video you f***** a*****!
 28 **Unknown Female:** He asked you to move.
 29 **Cuvillo:** That's f***** assault with a deadly weapon you a*****!
 30 **Houts:** I asked you to move.
 31 **Cuvillo:** I don't care. You don't get to run people over. D*****!
 32 **Unknown Female:** He asked you to move!
 33 **Cuvillo:** F*** Off!

34 Cuvillo. Decl., ¶ 34, Exh. 13. (timestamp 1:02)

35 Plaintiff Cuvillo does not show any indication of discomfort, embarrassment, or fear, let
 36 alone injury. As Gary Houts drives away, the gravel and ground appear to be of a lighter color than

1 the one in front of the vehicle before it moved. Further, Gary Houts drives the utility vehicle in the
 2 direction behind Plaintiff Cuvillo.

3 Plaintiffs continued to protest for the rest of the day, and also the day after on May 22,
 4 2024. Cuvillo Decl. ¶ 40.

5 **III. STANDARD OF REVIEW**

6 Review of a summary judgment is de novo. *Tzung v. State Farm Fire and Casualty Co.*,
 7 873 F.2d 1338 (9th Cir. 1989). Under Federal Rule of Civil Procedure 56(c), the moving party
 8 must show lack of evidence to support a verdict for the opposing party. *Celotex Corp. v. Catrett*,
 9 477 U.S. 317, 325 (1986). The opposing party must show evidence of “specific facts showing that
 10 there is a genuine issue for trial.” Id. at 324. The opposing party “must do more than simply show
 11 that there is some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co. v.*
 12 *Zenith Radio Corp.*, 475 U.S. 574 586 (1986).

13 A defendant’s motion is granted when the plaintiff fails to present evidence supporting
 14 elements on which he bears the burden of proof, and fails to show that material disputes could be
 15 resolved for either party. *Bloom v. Universal City Studios, Inc.*, 734 F.Supp. 1553, 1557-58 (C.D.
 16 Cal. 1990), aff’d, 933 F.2d 1013 (9th Cir. 1991).

17 **IV. ARGUMENT**

18 **A. Evidence Compels the Conclusion that Rowell Ranch Volunteers Did Not
 19 Have the Intent, nor were the Plaintiffs Intimidated or Prevented, for a §52.1
 20 Violation**

21 Civ. Code §52.1 violations, as enacted by the Bane Act, require all the following elements
 22 to be met:

- 23 (1) By threats, intimidation or coercion, defendant caused plaintiff to
 24 reasonably believe that if they exercised their right [e.g. “to free
 25 speech”], defendant would commit violence against them or their
 26 property and that defendant had the apparent ability to carry out
 27 the threats
 28 [or]
 29 Defendant acted violently against plaintiff/and plaintiff’s property
 30 to prevent them from exercising their right [e.g., to free speech]/to
 31 retaliate against plaintiff for having exercised their right [e.g., to
 32 free speech];

- (2) That defendant intended to deprive plaintiff of their enjoyment of the interests protected by the right [e.g., to free speech];
 - (3) That plaintiff was harmed; and
 - (4) That defendant's conduct was a substantial factor in causing plaintiff's harm.

The California Civil Jury Instructions (“CACI”) 2024, elaborate on instruction no. 3066’s with “Directions for Use”. It states that under the Unruh Act, if only the statutory minimum damages of \$4,000 is sought, it is not necessary to prove harm and causation. *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 33 [219 Cal.Rptr. 133, 707 P.2d 195]. The directions presume the same rule applies under the Bane Act as the statutory minimum of section 52(a) should be recoverable. Therefore, a plaintiff who is *only* claiming statutory damages of \$4,000 does not have to prove the last 2 elements of harm and causation.

The Bane Act requires "an attempted or completed act of interference with a legal right, accompanied by a form of coercion." *Jones v. Kmart Corp.*, 17 Cal. 4th 329, 334, (1998). To obtain relief under this statute, a plaintiff must prove that a defendant tried to, or did, by the specified improper means, prevent the plaintiff from doing something that he had the right to do under the law, or force plaintiff to do something that he was not required to do under the law. *Austin B. v. Escondido Union Sch. Dist.*, 149 Cal. App. 4th 860, 883, (2007) (citing *Jones*, 17 Cal. 4th at 334). The relevant inquiry under the Bane Act "is whether a reasonable person, standing in the shoes of the plaintiff, would have been intimidated by the actions of the defendants and have perceived a threat of violence." *Richardson v. City of Antioch*, 722 F. Supp. 2d 1133, 1147 (N.D. Cal. 2010). "[T]he Bane Act requires that the challenged conduct be intentional." *Simmons v. Superior Court* (2016) 7 Cal.App.5th 1113, 1125. "The statutory framework of section 52.1 indicates that the Legislature meant the statute to address interference with constitutional rights involving more egregious conduct than mere negligence." *Shoyoye v. County of Los Angeles* (2012) 203 Cal.App.4th 947, 958.

In *Reese v. County of Sacramento*, 888 F.3d 1030, 1043 (2018), it was held that under California law “the Bane Act requires ‘a specific intent ...’” (citation omitted.)

1 *I. George Ferris' Interaction With Plaintiff Bolbol Cannot Meet the
2 Necessary Element of Intent, nor was it Intimidating, Coercive or Violent*

3 Plaintiffs have alleged in the third cause of action in their amended complaint that "All
4 Defendants" violated Civ. Code § 52.1. Plaintiffs claim that George Ferris tried to intimidate
5 Plaintiff Bolbol by apparently pushing into her and that his conduct was intended to infringe on
6 her exercise of her free speech rights.

7 The "offending" conduct (visible in the footage) lasts about half a minute and consists of
8 George Ferris telling Plaintiff that she needed tickets to the rodeo to tread where she and Plaintiff
9 Cuviello chose to walk through, and for them to leave.

10 George Ferris did not intend on preventing Plaintiff Bolbol from exercising her free speech
11 rights. In the short interaction, George Ferris articulates clearly his intent behind blocking Plaintiff
12 Bolbol's path. George Ferris' conduct was intended to "herd" the Plaintiffs and at best admonish
13 them for not having tickets to the rodeo. Clearly, he does not have the specific intent of depriving
14 Plaintiff Bolbol of her right to free speech.

15 Furthermore, there is no evidence that George Ferris actually knew Plaintiffs or what they
16 were up to. All the video shows was there attempt to pass through to the back entrance without
17 tickets. In the process, Plaintiff Bolbol played to her camera (which she knew was running),
18 making statements to the effect that this man "was a brute, that he was trying to intimidate a
19 woman". Finally, at the time of this interaction, Plaintiff Bolbol was not involved in any free
20 speech activities. They were instead walking and carrying their materials. They were likewise not
21 speaking to any members of the public and were not spreading their chosen message to anyone. It
22 bodes the question, what was the infringement on free speech that was taking place at that time.
23 That very brief interaction is the entirety of the claims asserted by Plaintiffs against George Ferris
24 for any purported bad conduct. Merely making your way to the location you want to pontificate at
25 is not in and of itself free speech.

26 Plaintiffs cannot point to any evidence which can lead to the conclusion that George Ferris
27 intended to deprive Plaintiff Bolbol of her free speech right at the time of their interaction.

1 George Ferris' conduct does not constitute as threatening, intimidating, coercive, or
 2 violent. He merely stood in front of her to block her path for a mere 30 seconds. The footage does
 3 not make clear if there was any actual physical contact between Plaintiff Bolbol and George Ferris.
 4 Both George Ferris and Plaintiff Bolbol tell each other off for "touching" them respectively, but
 5 only George Ferris categorically states "You are touching me. You are running into me." Plaintiff
 6 Bolbol did not reasonably believe that George Ferris would commit violence against her, or her
 7 property, for exercising her right. If she had reasonably believed as such, she would have stopped
 8 walking towards the back entrance and followed George Ferris' instruction to leave, or get out.
 9 Instead, she belligerently pushed through George Ferris. She clearly did not deem him a threat. If
 10 she had been marginally intimidated, she would have acknowledge that she did not have tickets.
 11 Instead, Plaintiff Bolbol continued to make their way into the premises while verbally and
 12 physically confronting George Ferris. What is manifest from the video of this lone encounter is
 13 the brusque, rude, attitude displayed by Plaintiffs and their mistreatment of ROWELL RANCH
 14 volunteers, law enforcement and members of the public in attendance. Plaintiff Bolbol refused to
 15 cooperate at all and then proceeded to verbally accost a second person she encountered several
 16 yards further after forcing her way past George Ferris. Not only did she continue to protest and
 17 demonstrate on that day, she did so on the next day as well.

18 The evidence compels the conclusion that George Ferris' actions were not threatening,
 19 intimidating, coercive or violent. In turn, and based on the evidence of Plaintiff Bolbol's conduct
 20 both during and after this interaction, Plaintiff Bolbol did not perceive George Ferris as a threat in
 21 any manner.

22 Plaintiffs cannot prove the required elements to establish a Bane Act §52.1 violation for
 23 George Ferris' conduct.

24 2. *Gary Houts' Actions Compel the Conclusion that Did Not Deprive Plaintiff*
 25 *Cuviello of his Right to Free Speech, nor did he Intend to do so.*

26 Plaintiffs' claim that Gary Houts prevented Plaintiff Cuviello's free speech and violated
 27 §52.1 by backing into Plaintiff Cuviello.
 28

1 Gary Houts did not intend to deprive Plaintiff Cuvillo of his free speech rights. Gary Houts
 2 drove the utility cart with the intention to assist a disabled patron. It is important to note that when
 3 he drives away, it is in the direction that he was backing into, and presumably in the direction of
 4 the disabled patron. Further, just before moving the utility cart, Gary Houts asked Plaintiff Cuvillo
 5 to move from behind it. If his intention was to deprive Plaintiff Cuvillo of his rights, he would
 6 not have warned him prior to moving the vehicle. Plaintiff Cuvillo did not bother to move on his
 7 own accord, and instead engaged in a verbal argument with another woman standing nearby. In
 8 the process and due to his own failure to get out from behind the utility cart there was some
 9 “contact” between the utility cart and Plaintiff Cuvillo. These undisputed facts compel the
 10 conclusion that Plaintiff’s cannot establish the specific intent of Gary Houts as wanting to deprive
 11 Plaintiff Cuvillo of his free speech.

12 Plaintiff Cuvillo was not threatened, intimidated, or coerced by Gary Houts’ negligent
 13 backing of the utility cart because it was not a violent action, and the evidence of Plaintiff
 14 Cuvillo’s conduct after this occurrence. The footage shows that there was not enough contact to
 15 even nudge Plaintiff Cuvillo, as he kept filming steadily and proceeded to unleash a tirade of
 16 curses both at Gary Houts and at the woman standing there. In short, whatever contact took place
 17 it was *de minimis*. Plaintiff Cuvillo lashed out right after, and later continued to protest not just
 18 on the day, but the day after as well. A reasonable person would not have been intimidated by this
 19 negligent action, and Plaintiff Cuvillo was certainly not.

20 The evidence categorically shows that Gary Houts’ conduct cannot meet the elemental
 21 requirements of a §52.1 violation.

22 **B. Evidence Compels the Conclusion that Plaintiffs were not Harmed**

23 For a Civ. Code §51.7 violation, a plaintiff claims that defendant committed an act of
 24 violence against them because of their actionable characteristic, e.g. political affiliation in this
 25 instance. To establish this claim, the plaintiff must prove *all* of the following:

- 26 1. Defendant committed a violent act against plaintiff or their property;
 27 2. A substantial motivating reason for defendant’s conduct was their perception of
 plaintiff’s characteristic, e.g. political affiliation
 28 3. Plaintiff was harmed; and

1 4. Defendant's conduct was a substantial factor in causing plaintiff's harm.

2 The California Supreme Court concluded that '[r]equiring the plaintiff to show that
 3 discrimination was a substantial motivating factor, rather than simply a motivating factor, more
 4 effectively ensures that liability will not be imposed based on evidence of mere thoughts or passing
 5 statements unrelated to the [dispute]'... *Alamo v. Practice Management Information Corp.* (2013)
 6 219 Cal.App.4th 466, 479 [161 Cal.Rptr.3d 758].

7 1. *Evidence Establishes that Law Enforcement was Already Scheduled to be
 8 at the Park before Gary Houts' Phone Call*

9 The Plaintiffs claim Gary Houts intimidated them by calling the police (notably at
 10 Plaintiffs' invitation) and telling the police that they were blocking ingress to the event. While
 11 there is a question of fact regarding the extent to which they were blocking ingress, and the fact
 12 whether this call to the police would constitute a threat given that Plaintiffs actually instructed
 13 Gary Houts to call the police, the most significant issue Plaintiffs face is the issue of causation.

14 The police were already en route to the Park when Gary Houts made the call to dispatch.
 15 Law enforcement arrived less than 5 minutes after the call. The recording of Gary Houts' phone
 16 call to dispatch also includes the call from dispatch to the ACSO officer already present at the
 17 park. This call from dispatch to the ACSO officer took place 7 minutes after Gary Houts phone
 18 call. In the call, the ACSO officer categorically states that they have already communicated to the
 19 protesters. Gary Houts' call did not cause the arrival of law enforcement whatsoever. Even if
 20 Plaintiffs' claim that their interaction with law enforcement harmed them in some way, Gary
 21 Houts' phone call did not cause this harm, let alone be a substantial factor in causing this harm.

22 Once the police arrived, they did not arrest or otherwise impact the Plaintiffs' free speech
 23 activities. Plaintiffs continued to demonstrate at the Park for another 2 days after the arrival of the
 24 police. These facts compel the conclusion that Plaintiffs were not harmed and there is no §51.7
 25 violation.

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1 2. *The Undisputed Evidence Compels the Conclusion that Plaintiff Bolbol*
 2 *Suffered No Harm from her Interaction with George Ferris*

3 As discussed above, George Ferris did not have the intent to limit Plaintiff Bolbol's free
 4 speech nor did he commit any violent act, let alone *substantial* motivation. If anything, Plaintiff
 5 Bolbol ran into him.

6 For the purposes of §51.7, Plaintiff Bolbol was not harmed either. There is no evidence
 7 physical injury nor any credible evidence of emotional distress. Right after making her way past
 8 George Ferris, she threatens a lawsuit while hurling verbal abuse. Afterwards, Plaintiff Bolbol
 9 continued to demonstrate and protest not just on May 21, 2020, but also the next day. Plaintiff
 10 Bolbol demonstrated and spread her message at any location she deemed fit, for the duration of
 11 the rodeo event, negating any claim of fear and intimidation.

12 The evidence compels the conclusion that George Ferris' conduct does not meet the
 13 requirements for a §51.7 violation either.

14 3. *Evidence Compels the Conclusion that Plaintiff Cuvillo was not Harmed*
 15 *by Gary Houts' Utility Cart*

16 Likewise, the utility vehicle incident with Gary Houts and Plaintiff Cuvillo is discussed
 17 above and constitutes negligence at best rather than intentional conduct.

18 Plaintiffs cannot prove that Gary Houts motivating intent was Plaintiff Cuvillo's political
 19 affiliation since his intention for moving the utility cart was to assist a disabled patron and he
 20 warned Plaintiff Cuvillo before moving it. Even if the alleged motivation of Gary Houts was his
 21 animus towards Plaintiff Cuvillo's speech, it was not a *substantial* motivating factor. Further, it
 22 is not an act of violence since it did not even nudge Plaintiff Cuvillo.

23 Based on the evidence, there was no personal injury that took place or that has been claimed
 24 in discovery in this case, as there was no doctor visit, no treatment, and most notably no break in
 25 the Plaintiffs ongoing expression of free speech that day or the next when they returned.

26 Again, the evidence points to the fact that Plaintiffs cannot establish the requirements of a
 27 §51.7 violation.

1 **C. Plaintiffs Cannot Establish Intent and Harm for Assault and Battery**

2 “The essential elements of a cause of action for assault are:

- 3 1) defendant acted with intent to cause harmful or offensive contact, or
 4 threatened to touch plaintiff in a harmful or offensive manner;
 5 2) plaintiff reasonably believed she was about to be touched in a harmful or
 6 offensive manner or it reasonably appeared to plaintiff that defendant was
 7 about to carry out the threat;
 8 3) plaintiff did not consent to defendant’s conduct;
 9 4) plaintiff was harmed; and
 10 5) defendant’s conduct was a substantial factor in causing plaintiff’s harm.”

11 *So v. Shin* (2013) 212 Cal.App.4th 652, 668–669.

12 “The essential elements of a cause of action for battery are:

- 13 a) defendant touched plaintiff, or caused plaintiff to be touched, with the
 14 intent to harm or offend plaintiff;
 15 b) plaintiff did not consent to the touching;
 16 c) plaintiff was harmed or offended by defendant’s conduct; and
 17 d) a reasonable person in plaintiff’s position would have been offended by
 18 the touching.”

19 *So v. Shin* (2013) 212 Cal.App.4th 652, 669.

20 The complaint presents the sole basis for assault against Plaintiff Bolbol as the conduct of
 21 George Ferris who told Plaintiffs they needed tickets to enter the gate they went through. She
 22 ignored George Ferris, and proceeded to try to walk through him. The footage is evidence of the
 23 fact that if there was any physical contact, it was minimal, brief, and initiated by Plaintiff Bolbol.
 24 All the footage shows is George Ferris’ attempt at herding the Plaintiffs rather than any offensive
 25 touching. Plaintiff Bolbol did not suffer either actual harm or physical injury. She was clearly not
 26 harmed and proceeded on her way, including rudely addressing another person ahead of her. As
 27 discussed above, George Ferris did not have the intent to harm Plaintiff Bolbol when he was trying
 28 to enforce tickets.

29 Similarly, Plaintiff Cuvillo who claims assault and battery from the utility vehicle incident
 30 has failed to meet his burden to prove intent versus mere negligence and has not claimed in the
 31 complaint that he suffered harm (the forth required element). A reasonable person, in both
 32 Plaintiffs’ position would not deem the contact offensive. Plaintiff Bolbol literally ran into George

1 Ferris, while Plaintiff Cuvillo admittedly was warned to get away from the vehicle yet refused to
2 heed.

3 Plaintiffs cannot establish intent and harm. The reliance on the same conduct of Mr. Ferris
4 and Mr. Houts leaves the trier of fact needing more as the evidence posits alternatives to the
5 required elements.

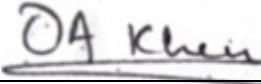
6 **V. CONCLUSION**

7 Based on the evidence, Rowell Ranch is entitled to judgment. In the alternative, this Court
8 should adjudicate the dismissal of the causes of action individually.
9

10 Dated: June 27, 2024

GORDON REES SCULLY MANSUKHANI, LLP

11 By:

12 
13 Paul Caleo
Osmaan Khan
14 Attorneys for Defendant
15 ROWELL RANCH RODEO INC.
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PROOF OF SERVICE*Cuviello, et al. v. Rowell Ranch Rodeo Inc., et al.*

USDC - Northern District of California, Case No. 3:23-CV-01652

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: Gordon Rees Scully Mansukhani, LLP, 100 Pringle Avenue, Suite 300, Walnut Creek, CA 94596. On the date set forth below, I served the within documents:

**DEFENDANT ROWELL RANCH RODEO INC.'S NOTICE AND CROSS-MOTION
FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY
ADJUDICATION**

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- VIA E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent by electronically mailing a true and correct copy through the Gordon Rees Scully Mansukhani, LLP electronic mail system from my email address: khernandez@grsm.com, to the email address(s) set forth herein.
- by having Nationwide PERSONALLY DELIVER the document(s) listed above to the person(s) at the address(es) set forth below.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in United States mail in the State of California at San Francisco, addressed as set forth below.
- by placing a true copy thereof enclosed in a sealed envelope, at a station designated for collection and processing of envelopes and packages for overnight delivery by FEDEX as part of the ordinary business practices of Gordon Rees Scully Mansukhani, LLP described below, addressed as follows:

17 18 19 20 21 22 23 24 25 26 27 28	<p>Attorneys for Plaintiff DENIZ BOLBOL</p> <p>Lily Rivo, Esq. GREENFIRE LAW, PC 2748 Adeline Street, Suite A Berkeley, CA 94703 Tel: (510) 900-9502 Fax: (510) 900-9502 Email: lrivo@greenfirerlaw.com jblome@greenfirerlaw.com</p> <p>Attorneys for Defendants COUNTY OF ALAMEDA; ALAMEDA COUNTY DEPUTY SHERIFF'S OFFICE; and JOSHUA MAYFIELD</p> <p>William B. Rowell, Esq. Thiele R. Dunaway, Esq. Marc Brainich, Esq. Michele C. Kirrane, Esq. FENNEMORE WENDEL 1111 Broadway, 24th Floor</p>	<p>Plaintiff In Pro Per</p> <p>Joseph P. Cuviello 205 De Anza Blvd. San Mateo, CA 94402</p> <p>P.O. Box 2834 Redwood City, CA 94064 Tel: (650) 315-3776 Fax: Email: pcuvie@gmail.com</p> <p>Attorneys for Defendants HAYWARD AREA RECREATION AND PARK DISTRICT, and KEVIN HART</p> <p>Dale L. Allen, Jr., Esq. Nicholas D. Syren, Esq. ALLEN, GLAESNER, HAZELWOOD & WERTH, LLP 180 Montgomery Street, Suite 1200 San Francisco, CA 94104</p>
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 27, 2024 at Sacramento, California.



Kristie Hernandez

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